

Water district headed for hearing over pumping permit

By William Hoover

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The Medina County Groundwater Conservation District (MCGCD) became embroiled in the controversy regarding the 1,766 acre Hills of Castle Rock Subdivision when developer Shaul Baruch, of Baruch Properties 1766 San Antonio Ltd. (BP), applied for a pumping permit from the local water district to serve the planned 3,500 lot subdivision.

MCGCD General Manager Luana Buckner recommended the board approve a permit to pump 1,724 acre-feet of water annually from the Trinity Aquifer. BP is requesting only 1,724 acre-feet because the other 40 acres of the proposed HoCR subdivision are in Bandera County.

Upon hearing Buckner's recommendation, nearby residents in the San Geronimo Creek area, members of the San Geronimo Valley Alliance (SGVA), and others living in the region of the proposed subdivision requested a contested case hearing on the pumping permit. Buckner appointed Hondo Municipal Court Judge Chris Schuchart to preside over the preliminary hearing on Tuesday, Dec. 8, at 10:30 a.m. in the Medina County Courthouse.

Buckner said the MCGCD has the option of hiring an independent judge or paying

the State Office of Administrative Hearing to provide a judge for the hearing, but she said it would cost fewer taxpayer dollars to hire an independent judge.

The SGVA believes there is a conflict of interest. "We wanted a different judge and a different venue," said Randy Johnson, the SGVA president. "Our attorney is Rick Lowere and he thinks the administrative judge should be someone who is not from Medina County which would make the decision impartial."

Buckner said the ruling in the contested case hearing is not necessarily binding, but the permit is on hold until the process is complete. "Then the hearing examiner will make a recommendation to the MCGCD Board. They are not bound by that recommendation," she said. "They can follow it or choose to do something differently."

The HoCR project is so unpopular, as Buckner put it, because of the perceived threat to the water table of the Trinity Aquifer, that she called a meeting on Sept. 30 with Baruch's associate, David Parkerson, SGVA members, and adjoining landowners.

"We had an informal meet-

ing between the parties, with no attorneys present, just to talk about any opportunities to resolve the issue through additional permit conditions, through some negotiated process, without going to this contested case hearing," said Buckner. "Because (the case hearing) is going to be very expensive and we don't relish the idea of spending a lot of taxpayer dollars on that process."

Johnson, however, says Buckner was not saving the county taxpayers any money and she should not have involved Schuchart in the case because he lives in Medina County and is involved in its politics. Schuchart is the husband of Medina County Court at Law Judge Vivian Torres.

"In the MCGCD rules, it says all the expenses of the GCD will be passed on to the (permit) applicant and to the protestant," said the SGVA President. "The GCD pays nothing according to their district rules regarding contested case hearings. So she is only saving money for the developer."

Johnson believes financial considerations, on behalf of BP, seem to be driving the convoluted process the company is experiencing. Johnson had read reports on

the quality of water produced by BP test wells in 2006. "The water was undrinkable with Total Dissolved Solids of 2,340 parts per million. TCEQ requires potable water to have a TDS of less than 1,000 ppm," he said. "It is gyp water. BP only wants this permit so they can sell the property. The entire parcel is on the commercial market, listed for sale with D. B. Harrell, and if they have a water permit, the land is more valuable."

"The Trinity Aquifer cannot support millions of gallons of pumping without harming the wells of surrounding landowners," said Johnson. "BP's big well is 200 yards from my property line and the cone of depression from pumping that much water will cause the water in the well on my property to drop by a significant amount. It is wrong to issue this permit without any supporting science. I don't think any members of the MCGCD have wells in the Trinity Aquifer or they would be more concerned."

MCGCD does not require BP to prove it can obtain 1,724 acre-feet annually without negatively impacting existing wells in the Trinity Aquifer. "We have all the data required under our rules," she said. "We followed every requirement in the (MCGCD) rules and that is why I proposed granting their

MCGCD pumping permit

permit as requested, with the one caveat that we would have a monitoring well. That was an additional permit condition included that they agreed to."

Texas Attorney General Greg Abbott has ruled the data BP submitted to MCGCD is not subject to the open records act, reported Buckner. Accordingly, the District is relying on data privy only to its Board of Directors and lawyers to support the issuance of the pumping permit to BP.

Buckner says she fought with the AG over the ruling the data be kept private.

"We argued that it should be public, but the AG ruled it is not," said Buckner. "That issue needs to be taken up with Mr. Abbott."

Hydrologist Ron Green, with the Southwest Research Foundation, said he is not sure about legal requirements, but common sense suggests MCGCD should require a water availability study before issuing a permit to withdraw 1,724 acre-feet of water a year from the Trinity Aquifer.

"I guess I'm not terribly surprised," said Green. "I don't know what the Medina district requires."

Green believes there is more involved in ensuring water availability than the ability to pump the required volume and he welcomed the SGVA protest.

"I looked at some early Trinity Aquifer tests and there are two issues in water availability," said the hydrologist. "The quantity and quality of that water (over HoCR) is bad."

Vic Hildebrand, General Manager of the Uvalde Water District and Vice President of the Board, had a hard time believing any MCGCD information was not releasable under the Open Records Act. "If I was a neighbor to that development and I already had a well, I think it would be permissible to give me that. (I would think) everything in her MCGCD office is open to the public."

The Uvalde County water district does not allow well owners to cause harm to their neighbors' wells and requires 72 pump tests to evaluate the effect on neighboring wells. "It's a balancing act," said Hildebrand. "We have to make sure the county can receive future income and future growth. At the same time, we want to make sure no one else is stepped on."

Buckner conceded no one knows if there is adequate water in the Trinity, but she did report BP had drilled wells which were producing relatively high volumes of groundwater from the Trinity. "They have some high vol-

ume wells and that is probably all I can say about that, without getting into the confidentiality," she said. "We don't need the science before we issue a permit."

Hildebrand says the MCGCD should require water availability studies to fulfill its mission of protecting all landowners equally. He said a water district issuing well permits is like a DPS officer deciding what penalty to assess a driver for speeding.

"It is the officer's discretion to decide whether you should be ticketed, or just warned, or you may need to be taken to jail as a major menace to the driving public," Hildebrand said. "Buckner and her board have the same power of discretion."

Lack of water study for HoCR draws fire

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Landowners in rapidly developing areas of the Edwards Aquifer Recharge Zone in northeast Medina County are upset. They, along with water district leaders, are frustrated by steps being taken in the creation of the proposed Hills of Castle Rock subdivision, which could have 12,000 residents when fully built.

Unable to prove water availability needed to obtain a final plat for the 3,500 lot HoCR subdivision, developer Shaul Baruch convinced Medina County Commissioners Court on Oct. 22 to create the Medina County Fresh Water Supply District #1.

San Geronimo Valley Alliance members and supporters objected, via a petition to rescind the vote because open meeting laws do not allow vague agenda items. In the SGVA's Oct. 25 letter, the group argued that when the vote was taken on MCFWSD #1, there was no wording on the agenda indicating the district would serve the HoCR subdivision.

On June 9, Baruch Properties applied with the Medina County Groundwater Conservation District for 1,724 acre-feet of annual groundwater pumping rights to serve the HoCR. MCGCD has the authority to issue up to one acre-foot, or 325,851.4 gallons of water, to entities that apply for pumping permits in northern Medina County over the Trinity Aquifers.

Luana Buckner, the MCGCD General Manager, recommended her board approve the permit. BP, however, has

not shown proof of the aquifer's ability to produce the water without harming the wells of existing landowners.

The SGVA believes BP is attempting to circumvent the MCCC by going through MCGCD to obtain a permit.

If BP is able to obtain approval from the MCGCD, some residents believe BP will return to commissioners to leverage the water district's permit against the Medina County subdivision rules, to supposedly prove available water for the 3,500 lots BP wants to market in the HoCR subdivision.

According to the MCGCD Management Plan, 2005-2015, on file with the State of Texas, the total estimated Trinity Aquifer groundwater use in the district, of 1,329 acre-feet per year, is less than what BP is now requesting, at 1,724 acre-feet. According to the plan, the projected additional available Trinity groundwater supply in the district is 860 acre-feet per year, which is spread across the northern portion of Medina County.

Added are the uncertainties of BP's wishes to pump the maximum amount of water out of the aquifer (one acre-foot is almost 326,000 gallons). The total comes to almost 562,000,000 gallons a year for a relatively small area in the northeastern portion of the county.

Neither MCCC nor the water district's Board of Directors know if nearly 562 million gallons per year can actually be pumped out, in a sustainable manner. Nor does anyone know what effects BP's pumping will have on people living adjacent to HoCR, in regard to their domestic and agricultural water use.

To date, the district's board of directors has not instructed

ruch's pumping application for 1,724 acre-feet on hold until the district can conduct a sustainable water study, or to inform BP they may participate by gathering the necessary data for aquifer recharge, transmissivity and storage of water. BP would also have to consent to allow the data to be verified by an independent hydrologist.

Critics believe MCGCD could have accomplished what, thus far, the county has not: to announce that no subdivision will be allowed without a water availability report and its independent verification.

According to MCGCD rules, "The District may deny a well construction permit or limit groundwater withdrawals in accordance with guidelines stated in the rules of the District." Section 6.11 states, "The Board may limit the production of the well to ensure no injury is done to adjoining landowners or the aquifer."

The SGVA is asserting the granting of a permit to BP to pump 1,724 acre-feet a year, without a water availability study, which most Hill Country counties now require, is irresponsible and will probably cause harm to the wells of adjoining HoCR landowners.

Regarding BP's permit application to pump 562 million gallons a year from the Trinity Aquifer without water studies, Buckner said, "There is nothing about those requirements in our rules," she said. "Our rules are based on correlative rights, not on water availability. The county requires water availability studies; the water district does not."

The correlative theory provides each landowner with an equal right to use underground water for a beneficial purpose. However, landowners are not given the prerogative to deplete a neighbor's water supply.

Buckner said the MCGCD rules were not set up to require water availability studies. When asked if Medina County's governments are supposed to protect groundwater in the district, she said, "Yes. That is why we have further limited the water availability in the Trinity, more than in the other aquifers."

The Edwards Aquifer is allowed up to two acre-feet in pumping permits.

When asked for copies of her last four annual reports to discover if there was any data on BP's test wells, Buckner had nothing on file. "We've been doing those verbally, not written, for the past several years," she said. "You used to have to do a written report and turn it in to the state, but (the state) changed that requirement several years ago."

Asked if the MCGCD had any hydrogeology data showing availability of the 1,724 acre-feet of water annually, Buckner said, "The rules say they are entitled to one acre-foot per acre owned. Whether they can physically produce that much water, is an issue that is not addressed in our rules. The BP-created Medina County Fresh Water Supply District #1 is regulated by the Texas Commission on Environmental Quality as a public water system. TCEQ has specific rules and regulations as to how much water they have to show is available through pump tests and how much storage is available. But that is not something the (MCGCD) regulates."

Lack of water study . . .

applicants must be treated the same. "The water code says you have to treat every water applicant the same, so we could not require a water availability study on one applicant and not require it of every applicant," Buckner said. "I can't treat that subdivision differently than any other subdivision, regardless of how large it is, or regardless how dense it is, or regardless of how unpopular it is. We have to treat people fairly and, if we don't, we will be sued and that will cost the taxpayers a lot of money."

"Fair enough," said Jim Hannah, a former director of the Bandera County Groundwater District. "But the Medina district rules (Section 5.11) show allowances for permits of less than one acre-foot. The Medina rule says permits are to be issued 'up to but not exceeding the point that the total volume authorized to be withdrawn plus all other withdrawals pursuant to exempt wells and existing wells (the surrounding area residents' wells) equals managed available groundwater for the aquifer.' Her board has the authority to issue a permit for less than the maximum one acre-foot per acre."

Vic Hildebrand, the General Manager of the Uvalde Water District and Vice President of the Board, pointed out that the correlative theory provides each landowner with an equal right to use groundwater for a beneficial purpose.

"As a general manager, it is my job to level the playing field in Uvalde County so everyone is treated the same," said Hildebrand. "Giving the

developer of the Hills of Castle Rock a permit to drill wells in the Trinity to withdraw 1,724 acre-feet a year, without knowing if the aquifer can produce that much water and not dry up his neighbor's wells, is not treating everybody the same."

According to other district managers, Chapter 36 of the Texas Water Code gives MCGCD the authority to require water availability studies, to provide well production limits and to make spacing requirements.

In Subchapter D. Powers and Duties, Section 36.116 of the TWC states, "(A) In order to minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, to control subsidence, to prevent interference between wells, to prevent degradation of water quality, or to prevent waste, a district by rule may regulate the production of groundwater by: (A) setting production limits on wells; (B) limiting the amount of water produced based on acreage or tract size; (C) limiting the amount of water that may be produced from a defined number of acres assigned to an authorized well site; (D) limiting the maximum amount of water that may be produced on the basis of acre-feet per acre or gallons per minute per well site per acre; [or] (E) managed depletion; or (F) any combination of the methods listed above in Paragraphs (A) through (E)."

When approving any rules limiting groundwater production, the district may preserve historic or existing use before the effective date of the rules

in order to be consistent with the district's comprehensive management plan, according to the state.

Buckner said protecting the

rights of BP is just as important as protecting the rights of area landowners along with existing residents who had their wells within the MCGCD. "Those rules were designed to protect property rights," she said. "That is why (all pumping applicants) are all entitled to exactly the same amount of water and exactly the same process."

Hildebrand said his district requires water availability studies and MCGCD could require them also. "It's not out of their scope of authority to make those requirements," he insisted. "A lot of water districts do require those studies."

If MCGCD rules are based only on correlative rights, the UCGCD General Manager said Buckner needs to ask her Board of Directors to require rule changes. "But even so," Hildebrand said, "her board can require the land developer to perform their water study to make sure what he is asking for is available to his clientele."

Gillespie County had the same kind of problem with residents adjoining a big subdivision with expensive houses, the Boot Ranch Subdivision, according to Hildebrand. "Their General Manager, Paul Tybor, had to handle the developers, who wanted copious amounts of water out of the aquifer for big houses plus a golf course. He made them do a study and then they understood more," Hildebrand

said. "The requirement for a water study does not necessarily have to be stated in the (MCGCD) rules. The rules do not say she must grant the permit either."

Contacted Thursday, Tybor said Hildebrand was correct about GCD's having the authority to require water availability studies.

When told about Tybor and Hildebrand's comments about the GCD having the authority to require proof of potable water availability, Buckner said, "I agree. We are going to be undergoing a lot of rule changes. My recommendation is to hold off on that until we get our desired future conditions. Now, the process is not moving along as rapidly as I once thought it was going to."

Asked if district rules can be changed to require an availability study to ensure no one with an existing well is harmed and the developer and the potential lot buyers in the proposed subdivision have the water they expect, Buckner answered that they can. But she added, "I don't necessarily agree that a water availability study is the end-all answer. A water availability study will tell you what is in the ground today but won't tell you what is going to be in the ground tomorrow or next week or next year."